

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 232 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1-5 No

PARESHBHAI GUNWANTBHAI JOSHI

Versus

B C SARVAIYA

Appearance:

MR ZUBIN F BHARDA for Petitioner

MS. KN VALIKARIMWALA for Respondents

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 12/03/98

ORAL JUDGEMENT

Rule. Ms. Valikarimwala waives service of rule.
Heard learned counsel for the parties. By the impugned order dated 20.12.1997 Joint Civil Judge, Navsari, has rejected the petitioner-plaintiff's application for framing additional issues.

The plaintiff-petitioner filed the suit for declaration and injunction against the respondent-defendants to defend their right in the

building being constructed adjoining to the house where the plaintiff is residing. The plaintiff also contended that the defendant No. 3 raised construction of the building known as Panchtarak Apartment in such a way that it flouted all the terms and conditions imposed by the nagarpalika and as such the construction is illegal. The plaintiff also alleged that the whole construction has damaged the wall of his house on the Southern side. In view of this, the plaintiff sought for framing of additional issues as to "whether the defendant No. 3 proves that the construction carried out by him in constructing Panchtarak apartment is illegal? The learned Civil Judge (J.D.), Navsari, by the impugned order dated 20.12.1997 rejected the application Exh. 62 on the ground that the building Inspector has already filed complaint with regard to the illegal construction made by defendant No. 3 and as such it was not necessary for framing additional issue.

By order dated 13.2.1998 this court issued notice as to why this revision application be not admitted and allowed. Ms. Valikarimwala has put in appearance for the respondents and as such I have heard the matter finally.

Ms. Valikarimwala has raised preliminary objection that this revision application is not maintainable as there is no error of jurisdiction which calls for interference by this court in exercise of power under Section 115 of C.P.C. She has placed reliance on decisions of the Allahabad High Court in the case of M/S. KISAN UDYOG VS. UNITED BANK OF INDIA reported in AIR 1990 ALLAHABAD 8, CHANABASAWWA VS. B. RAMAPPA reported in AIR 1975 KARNATAKA 15 and BHASKAR VS. NARANDAS reported in 1956 BOMBAY 608.

I have gone through the judgements and there cannot be any dispute to the proposition of law laid down in the said cases. However, having heard the learned counsel for the parties in the present case I find that the impugned order suffers from material irregularity in exercise of jurisdiction. The order of the learned judge is perverse in the sense that there is a conscious violation of the procedure on the part of the learned subordinate judge. The learned judge has not examined the pleading of the party in right perspective. Simply because the Inspector has filed complaint, cannot be a ground for refusing to frame additional issue. The learned judge has also lost sight of that when defendant No. 3 has filed a suit for damages, an issue was framed as to whether the plaintiff proved that the defendant obstructed the plaintiff's right of easement by making construction. However, the said suit has been dismissed for default. In my view, considering the facts and circumstances of the case, additional issue sought to be

framed by the plaintiff is necessary for right conclusion to be arrived at by the trial court. In view of the aforesaid, this revision application is allowed and the order dated 20.12.1997 passed by the Civil Judge (J.D.), Navsari, is quashed and set aside. The application Exh. 62 for framing of additional issues as indicated above is granted. Rule is made absolute.

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